



# ***Montana Fish, Wildlife & Parks***

Region 2  
3201 Spurgin Road  
Missoula, MT 59804  
Phone 406-542-5500

January 30, 2015

Dear Interested Citizens:

Thank you for your thoughtful reviews and comments on a proposal by Montana Fish, Wildlife and Parks (FWP) to sell a right-of-way (ROW) road easement across Stuart Mill Bay Fishing Access Site (FAS) to a private party.

It is FWP's decision to deny the request. The following decision document explains the department's rationale for the decision, as well as reflecting substantive comments it received and FWP's responses to those comments. Upon completion of the public involvement process, FWP accepts the draft environmental assessment (EA) as final, along with the changes noted in the accompanying Decision Notice.

Please feel free to contact me at 406-542-5500 with any questions you may have. Thank you for your interest and participation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Randy Arnold', written in a cursive style.

Randy Arnold  
Regional Supervisor

RA/sr



***Montana Fish,  
Wildlife & Parks***

**DECISION NOTICE  
for the  
Stuart Mill Bay Fishing Access Site  
Proposed Right-of-Way Easement  
January 30, 2015**

**DESCRIPTION OF PROPOSED ACTION IN THE DRAFT EA**

In March 2003, Montana Fish, Wildlife & Parks (FWP) acquired approximately 363 acres of privately owned land (in 2 separate parcels in Deer Lodge County) in the vicinity of Stuart Mill Bay on Georgetown Lake, for the purpose of establishing Stuart Mill Bay Fishing Access Site (FAS). A parcel of private land (owned by Diana Neely) is located between the two parcels that comprise the FAS. Within the Neely parcel is a private inholding (0.26 acre) owned by Charles Stokke. Georgetown Lake Road is a county road that runs through the FAS and Neely parcels.

There is an existing short segment of road that connects Georgetown Lake Road (hereafter, the county road) with, and was formerly used as access to, an old mining claim (the Stokke parcel) within the Neely parcel. This road segment exits the county road and traverses approximately 78 feet of FAS property before it meets the eastern boundary of Neely's property.

FWP proposes to sell Neely a right-of-way (ROW) road easement. Neely has requested that FWP sell her an ROW easement on the road segment that traverses FAS property, connecting the county road to her property. The purpose of the ROW would be to provide Neely and Stokke with legal access across the FAS to their private parcels. The acreage proposed for the ROW easement totals 0.09 acre. The sale of the ROW easement would not convey ownership of the land to Neely. The public would be allowed to park along the ROW that falls within the FAS in an area of limited public parking (due to the confines of Georgetown Lake Road in that vicinity). (See ATTACHMENT for Figure 3 from the Draft Environmental Assessment [EA], showing details of the proposed action.)

**ALTERNATIVES CONSIDERED IN THE DRAFT EA**

Action Alternative: Grant the Right-of-Way Easement: This was the preferred alternative in the Draft EA. FWP would sell an ROW easement to Neely, which would include the short segment of road traversing Stuart Mill Bay FAS. This would allow the landowners (Neely and Stokke) to legally access their property from this ROW. Because of the location of the easement on the

perimeter of the FAS and the small acreage involved, the proposed easement would not materially affect the FAS or diminish the value of the FAS property. The ROW would also provide some public parking (off of Georgetown Lake Road) for recreationists using the FAS.

No-Action Alternative: Although the short road segment across the FAS predates FWP acquisition of that land and was historically used by previous landowners, under the No-Action Alternative FWP would not sell an ROW easement to Neely, and the neighboring landowners could not legally use the road for motorized access to their property.

## **PUBLIC REVIEW PROCESS**

FWP is required by the Montana Environmental Policy Act (MEPA) to assess potential impacts of its proposed actions to the human and physical environments, evaluate those impacts through an interdisciplinary approach, including public input, and make a decision based on this information. FWP released a draft environmental assessment (checklist; “Stuart Mill Bay Fishing Access Site Proposed Right-of-Way Easement”) for public review of this proposal on January 16, 2014 and accepted public comment for 30 days until 5:00 P.M. on February 14, 2014.

Legal notices of the proposed easement and its Draft EA availability were published in the following newspapers (2014 dates): *Anaconda Leader* (January 17, 24), *Independent Record* (Helena; January 17, 24), *Missoulian* (January 16, 23), and *Philipsburg Mail* (January 23, 30).

FWP mailed 29 copies of the EA, and emailed approximately 25 notifications of the EA’s availability, to adjacent landowners and interested individuals, groups and other agencies. The EA was available for public review and comment on FWP’s web site (<http://fwp.mt.gov/>, “Public Notices”) beginning January 16 through February 14, 2014.

## **SUMMARY OF PUBLIC COMMENT**

FWP received 3 comments during the 30-day comment period, representing a total of 3 people, with all stating opposition to the proposal.

## **RESPONSE TO PUBLIC COMMENT**

All commenters shared concerns and were in opposition to FWP granting an ROW easement. Representative *public comments* are included below, along with FWP’s responses.

### ***Comment: Developed road access already exists***

*“... I strongly object to granting the right-of-way easement. The Neely and Stokke properties already have legal road access through an existing legal road easement. There is no need to sell a ROW road easement across FWP property.”*

*“ . . . she has access to her site now. ”*

*“There is no advantage to using this [proposed ROW] road when a legal road easement is currently available into the properties. ”*

*“We contend that this sale is unnecessary because Neely and Stokke have legal access to our properties by an existing road easement that accesses both properties. ”*

**FWP Response:** With the initial request for the easement and during early phases of the environmental analysis process, it was FWP’s understanding that existing access to the private properties was inadequate or convoluted--to the point that FWP would consider granting an ROW easement across the FAS to help resolve the access issue.

During the spring and summer of 2014 (when snow was absent from the proposed action area), FWP conducted field reconnaissance and was able to walk the properties involved, view on-site existing legal easements and historic roads, observe and identify uplands and wetlands, observe relatively newly disturbed or improved roadways, and note water culvert locations. Furthermore, FWP reviewed historic maps and photos and met with the private landowners (Neely and Stokke) who could be affected by the proposed action. These actions proved beneficial to FWP in developing a more complete understanding of the current layout of property ownership and existing accesses and easements, and whether or not additional access (via a new easement) was needed.

Excluding the proposed ROW road easement, there appear to be at least three existing (fully developed) accesses leading south off the county road onto Neely’s parcel, and one of these is also the historic and existing (currently used) access road to the Stokke inholding.

***Comment: The public would not gain parking access to the FAS via the ROW road easement, and design details and analysis of such parking were lacking***

*“I would argue that the opportunity for public parking will be negligible if it will exist at all. The area on the western side of the ROW is wet and should remain undisturbed. The eastern portion would have to be excavated and graded and made wider to provide parking. . . . Even then the turnaround is questionable unless backing into oncoming traffic on a curve. The analysis and specifications on this part of the project should be part of the proposal and available for comment as this is the only proposed public benefit. ”*

**FWP Response:** Upon review and on-site evaluation, FWP found that parking for the public would not be possible without extensive removal of trees and small vegetation in conjunction with increasing the width of the roadway. Such action also would be necessary in order to allow the public (drivers) to both enter the ROW and be able to turn their vehicles around within the road’s footprint--thereby gaining the ability to safely exit the road segment front-first, onto the county road--as well as to park safely off the road but parallel to the proposed easement roadway while visiting the site. Excavation would be complicated and expensive as the area is a steep hillside. Additionally, complicating the road widening and/or parking issues is the presence of a ground-level utility box that

is positioned within the location where widening would need to occur, as well as possible water drainage concerns.

***Comment: Proposed road segment in the ROW easement did not provide access to (a mining claim on) the Stokke parcel***

*“In regard to the History portion of the project there is an error in the document. The Proposed ROW is located on an old abandoned road that was formerly the county road before the new and existing county road was constructed. It was never used as access to the Stokke lot. In fact the Stokke lot was occupied by recreational cabins as early as 1916 and was never used as a mining claim.”*

FWP Response: These comments question FWP’s characterization of the ROW road segment across the FAS as an “old mining road,” an “abandoned mining road,” or access to an “old mining claim (Stokke Lot).” The Draft EA also stated, “The ROW easement would allow the landowners to legally access their property from this road.” This wording was based on FWP’s initial understanding of the road segment’s historical purpose, at the time the Draft EA was written. Without investigating the road segment’s exact historical location, extent (length) and uses, FWP does not know if it ever offered direct access to the Stokke parcel for any purpose.

***Comment: Terminology describing Stokke’s existing access is wrong***

*“The use of the terminology ‘Existing Trail to Stokke Lot’ in the EA is deceptive and wrong. This road easement has never been referred to as a trail and the use of the word “trail” is incorrect. . . . The certificate of survey also recognizes this road. Use of the terminology ‘two track road’ on page 2 of the EA is misleading.”*

FWP Response: FWP has now reviewed the certificate of survey (Certificate of Survey 228-A, filed with Granite County in 1997) referred to in the above comment; viewed past and present photographs as well as aerial photographs<sup>1</sup> (1995, 2005, 2009, 2011, 2013) of the area including the Stokke and Neely parcels; reviewed legal correspondence; and conducted spring and summer 2014 site visits to the proposed ROW. FWP concurs and acknowledges initially describing Stokke’s existing access road incorrectly.

## **DECISION**

Montana Fish, Wildlife & Parks’ proposal to grant an ROW easement across a small portion of Stuart Mill Bay FAS to a private party received no public support during the public review period. In the course of this public involvement process and additional site visits, FWP gained further information and clarification about the physical and historic setting of the proposed action alternative.

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<sup>1</sup> Montana State Library Geographic Information, Montana Topographic Map Finder.  
<http://maps2.nris.mt.gov/scripts/esrimap.dll?name=LocMap&Cmd=Map> Accessed 15 January 2015 (and in 2014).


Regarding the proposed ROW easement (action alternative in the Draft EA), FWP notes the following:

- Excluding the proposed ROW easement, access from the county road to the Neely and Stokke parcels already exists; Neely's existing developed roads, and Stokke's existing developed road (easement), provide legal access.
- Functional and safe public parking (and therefore, public benefit) via the ROW easement would not be achieved.
- The proposed ROW road easement would not provide legal access all the way to the Stokke parcel.
- FWP's terminology for the existing access road crossing Neely's property to the Stokke inholding was incorrect.

Therefore, based on the analysis of the public comments and analysis in the Draft EA, including changes noted in this Decision Notice (Response to Public Comment), I have decided not to proceed with the proposed action alternative. I have selected the "No Action" alternative, and am denying the request to issue a right-of-way road access easement.

I have reviewed the EA and applicable laws, regulations, and policies and have determined that this action will not have a significant effect on the human environment. Therefore, an Environmental Impact Statement will not be prepared.

By notification of this Decision Notice, along with clarifications noted within FWP's responses to comments, the draft EA is hereby made the final EA.



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Randy Arnold, Regional Supervisor  
Region 2 FWP

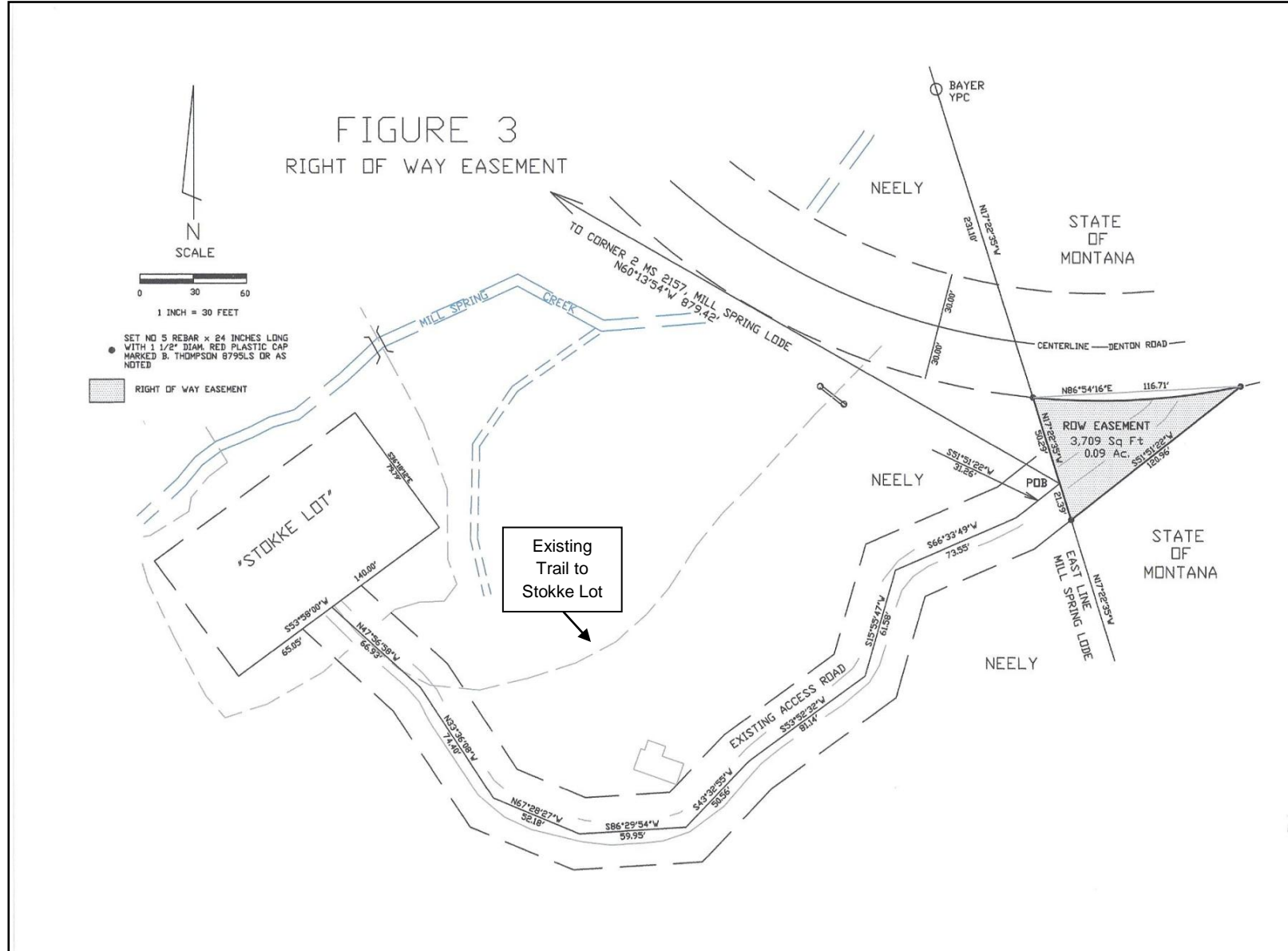
1/30/2015

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Date

## ATTACHMENT \*

Figure 3. Location of proposed right-of-way easement on Stuart Mill Bay FAS, Stokke Lot inholding, and existing trail to Stokke Lot



\*"centerline Denton Road" = centerline of Georgetown Lake (county) Road; "State of Montana" = Stuart Mill Bay FAS.